HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.18715 of 2006

Dated:11.09.2006

Between:

R.Vinay Kumar.

…Petitioner

and

The Chairman and Managing Director and others.

…Respondent

HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.18715 of 2006

ORDER:

The petitioner is availing power supply from the respondents under Category L.T.III(A) with Service Connection No.H3-3299 for allegedly running his dyeing and printing machine in the name and style of M/s.Ram Dyeing and Printing Company. His business premises was inspected by the fourth respondent on 16.09.2005. Having observed that the consumer was utilizing the industrial service supply for non-domestic purpose for running a cloth shop, the fourth respondent served a show cause notice of pilferage demanding payment of Rs.52,490/- towards provisional assessment charges being the cost of pilfered energy. The petitioner submitted explanation. Considering the explanation, the assessing officer, the third respondent herein, by order dated 07.01.2006 came to the conclusion that the petitioner has misused 3590 units and is liable to pay a sum of Rs.23,000/-, being the value of the energy misused. Aggrieved by the same, the petitioner preferred an appeal under Section 127 of the Electricity Act, 2003 (for short 'the Act'), before the Chief General Manager, the second respondent herein, who by impugned order dated 29.07.2006 dismissed the appeal confirming the order of the assessing officer.

Learned Counsel for the petitioner raised two contentions. He submits that under Section 126(5) of the Act, the assessing officer is

competent to assess the pilferage charges not exceeding three months if it is domestic/agricultural service and not exceeding for six months in respect of other categories of services. Secondly, he would urge that when the assessing officer, the primary authority, assessed the value at Rs.23,000/-, the second respondent erroneously assessed the cost of energy misused at Rs.49,925/-, which is not sustainable.

This Court is not able to agree with any of the submissions. A plain reading of Section 126(5) of the Act would not support the submission of the learned Counsel. Sub-section (5) of Section 126 of the Act contains a deeming provision enabling the assessing officer to draw a presumption with regard to the period of unauthorized use of electricity and the same does not in any manner act as a bar while exercising power under sub-section (3) of Section 126 of the Act. Insofar as the second submission is concerned, the appellate authority agreed with the assessing authority that the petitioner is liable to pay for 3590 units, which is misused units, and having found that there was a mistake in the calculation, correctly applied the principles of calculation.

The Writ Petition is misconceived and is accordingly dismissed. No costs.

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(V.V.S.RAO, J)

11.09.2006
vs